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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 437

OCEAN DRILLING & EXPLORATION COMPANY

Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN THE

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No. _____

OCEAN DRILLING & EXPLORATION COMPANY

Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Comes now Ocean Drilling & Exploration Company, petitioner, and respectfully prays that this Honorable Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit, affirming a judgment of the United States District Court for the Western District of Louisiana dismissing petitioner's third party complaint for indemnity against respondent.

OPINIONS BELOW

The opinions of the District Court and of the Court of Appeals for the Fifth Circuit are not reported. Both opinions and the judgment of the Court of Appeals are reproduced in the Appendix hereto.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on May 10, 1967. The mandate has been stayed pending the filing of this petition.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether the *Ryan* doctrine of indemnity flowing from a breach of an implied warranty of workmanlike service is to be applied in the offshore oil industry. *Ryan Stevedoring Co. vs. Pan-Atlantic Steamship Corporation* (1956) 350 U.S. 134, 76 S. Ct. 232, 100 L.Ed. 133.

2. Whether petitioner's claim for indemnity should have been dismissed on the pleadings alone and without petitioner being afforded the right to demonstrate the necessity of extending the *Ryan* doctrine to the offshore oil industry, on the basis of business and economic considerations, safety of performance, etc.

STATEMENT OF THE CASE

This case involves an accident on a fixed platform located in the Gulf of Mexico some 30 miles from the coast of Louisiana. Prior to March 8, 1964, petitioner employed respondent, Berry Brothers Oil Field Service, Inc., to perform certain repairs on the platform above mentioned. Respondent sent its crew out to the platform and repairs began. On March 8, 1964, a large tank, which was under repair, exploded and two employees of respondent were injured and one was killed. The two injured employees filed actions in the United

States District Court for the Western District of Louisiana, Lafayette Division, against petitioner. The complaints were substantially identical and alleged the employment relationship between the plaintiff and respondent here; that petitioner had employed respondent to perform the repairs above mentioned; that during the course of repairs the tank exploded; that it was the duty of petitioner to provide the plaintiff with a seaworthy vessel and to promulgate and enforce proper rules for the safe conduct of repairs; and that, as a result of petitioner's negligence and breach of the aforementioned obligations, the plaintiffs were caused to be injured. Petitioner answered denying liability and filed a third party complaint against respondent seeking indemnity. The third party complaint set forth the contract between petitioner and respondent and alleged that the explosion and resulting injuries were caused in whole or in part by the failure of respondent to perform the repairs in a safe and workmanlike manner. Respondent moved to dismiss on the ground that the third party complaint failed to state a claim upon which relief could be granted, and the District Court sustained the motion on the ground that the only negligence alleged in the complaint was that of petitioner and that in the absence of an express contractual indemnity, ". . . there is no implied indemnity against the effects of one's own negligence," citing *Halliburton Co. vs. Norton Drilling Co.* (C.A. 5, 1962) 302 F. 2d 431 and *Ardoin vs. Union Oil Company of California* (D.C. La., 1964) 226 F. Supp. 192.

The cases were ultimately brought before the United States Court of Appeals for the Fifth Circuit and consolidated for hearing. On May 10, 1967, that Court handed down its opinion affirming the judgment of the

District Court primarly on the ground that there was no basis in the jurisprudence for extending the *Ryan* doctrine to the offshore oil industry. This petition for certiorari followed.

REASONS FOR GRANTING THE WRIT

The exploration for and production of oil and gas in the offshore field, and particularly the Gulf of Mexico, is basically a post World War II development. In the twenty odd years since World War II, the offshore oil industry has grown tremendously, and now involves investments totaling billions of dollars, thousands of individual companies, thousands of employees, specialized and expensive equipment, etc. As in any new industry, problems have arisen as to the legal concepts to be applied to the new circumstances and relationships. For example, who would have thought twenty years ago that a roughneck in the oilfields or a worker on a Texas Tower would be a seaman? Yet such persons are now entitled to the various remedies afforded seamen, such as the Jones Act, 46 U.S.C.A. § 688. See, for example, *Grimes vs. Raymond Concrete Pile Co.*, 356 U.S. 252, 78 S.Ct. 687 (1958) and *Producers Drilling Co. vs. Gray* (C.A. 5, 1966) 361 F.2d 432. This is but one example of the evolving nature of this new industry. For a recent example of the problems involved, we invite the Court's attention to Appendix "E".

The nature of the work involved in the exploration and production of oil and gas is such that numerous specialty companies are involved. For example, the owner of the lease will employ a drilling contractor to drill the well. Either the lease owner or the drilling contractor will in turn employ boat companies or heli-

copters to provide transportation, labor and catering companies to provide personnel and supplies, and other equipment and specialty companies. (See Appendix "D") At times these relationships are governed by written contracts, which may or may not involve express indemnity agreements. The question posed in this petition is whether or not in the relationship between contracting parties in the offshore oil industry there is an implied warranty of workmanship performance, the breach of which would give rise to a claim for indemnity. We submit this is an important question of federal law which has not been, but should be, settled by this Court. Rule 19, Supreme Court Rules.

The Court of Appeals for the Fifth Circuit refused to extend the *Ryan* doctrine since it was, ". . . unable to discover any compelling reason to justify the extension of that shipowner-stevedore originated rule to the facts of this controversy." In support of this statement the Court pointed out that the platform in question was a fixed platform and not a vessel, and that accordingly respondent's injured employees were not entitled to a warranty of seaworthiness.

In *Ryan Stevedoring Co. vs. Pan-Atlantic Steamship Corporation* (1956) 350 U.S. 124, 76 S.Ct. 232, this Court held that a contract between a stevedore and a shipowner implied a warranty on the part of the stevedore to perform in a workmanlike manner, which was said to be comparable to a manufacturer's warranty of the soundness of the manufactured product, and further that the breach of this warranty would give rise to a claim for indemnity. The rationale of *Ryan* was to minimize hazards, to minimize the likelihood of accidents, and to place the burden ultimately on the party whose

default caused the injury. *Italia Societa Per Azioni di Navigazione vs. Oregon Stevedoring Co.* (1964) 376 U.S. 315, 84 S.Ct. 748. The same reasons for the existence of an implied warranty of workmanlike performance are present in the offshore oil industry. For example, in connection with the drilling of every well in the Gulf of Mexico, a specialty company known as a casing crew company will be employed to set casing — large diameter pipe that serves as a protective wall for the hole. Drilling contractors have found it more efficient, safer, and more economical to hire casing crews than to have the same work done by their own drilling crews. The casing crew company sends a trained crew and equipment onto the platform or submerged drilling barge. This crew then takes over the operation of the rig and other activity substantially ceases. If as a result of the negligence of the casing crew a man is injured and seeks recovery from the drilling contractor (the owner of the platform or drilling barge) on the basis, among others, of failure to furnish a safe place to work, there is no reason in theory why the drilling contractor should not be protected by *Ryan*.

As above mentioned, the Court of Appeals in this case seemed to base its decision in large part on the fact that the platform was not a vessel and respondent's employees were not entitled to a warranty of seaworthiness. The pertinent portion of the Court's opinion follows:

> "In its third-party complaint ODECO admits that the platform on which the injuries occurred was a 'fixed unmanned structure.' Clearly not designed to float on water, see *Offshore Co. vs. Robinson*, 5th Cir. 1959, 266 F.2d 769, such permanent structure is not a vessel and the injured employees do not therefore fall within the

definition of seamen. *Dronet vs. Reading & Bates Offshore Drilling Co.*, 5th Cir. 1966, 367 F.2d 150; *Texas Co. vs. Savoie*, 5th Cir. 1957, 240 F.2d 674, cert. denied, 355 U.S. 840, 78 S.Ct. 49, 2 L.Ed. 2d 51, *Simmons vs. Baxter Drilling, Inc.*, W.D. La. 1965, 239 F.Supp. 348. The injured employees are thus not entitled to the warranty of seaworthiness and must rely solely upon the establishment of some independent act of negligence on the part of ODECO as a basis for recovery. This controversy therefore appears to involve none of the factors calling for the application of those special rules governing the obligations and liability of shipowners to seamen. The claims against ODECO are based purely and simply on tort principles, see *Pure Oil Co. vs. Snipes*, 5th Cir. 1961, 293 F.2d 60, and cannot be properly viewed as involving any breach by Berry Bros. of an implied warranty of workmanlike service."

In so saying, the Court of Appeals ignores *Weyerhauser Steamship Co. vs. Nacirema Operating Co.* (1958) 355 U.S. 563, 78 S.Ct. 438. There a longshoreman employed by respondent was injured while unloading petitioner's vessel. Suit was filed against the shipowner asserting negligence and unseaworthiness, and the shipowner sought indemnity from the stevedore. The main demand was tried to a jury, which held for the longshoreman on the issue of negligence and for the petitioner on the issue of seaworthiness. After receiving the verdict, the Trial Judge directed a verdict for the stevedore on the third party demand. This Court reversed and said in part:

"Since the liability of respondent depended on different principles, *Crawford vs. Pope & Talbot, Inc.*, 3 Cir., 206 F.2d 784 792, all fact

issues involved in the third-party action should have been submitted to the jury after the verdict in the main case. *Further the verdict for Connolly did not ipso facto preclude recovery of indemnity by petitioner*, for as we have indicated, the duties owing from petitioner to Connolly were not identical with those from petitioner to respondent. While the jury found petioner 'guilty of some act of negligence,' that ultimate finding might have been predicated, inter alia, on a failure of petitioner to remove the shelter when the ship left New York, or a failure to correct or warn respondent of a latent dangerous condition known to petitioner when respondent began the Boston unloading. Likewise, the finding might have been predicated on a failure of petitioner during the five days in Boston to inspect the shelter, detect and correct the unsafe condition. *Although any of these possibilities could provide Connolly a basis of recovery, at least the latter would not, under Ryan, prevent recovery by petitioner in the third-party action.*" (Emphasis supplied)

An identical situation is present here. As in *Weyerhauser*, the plaintiffs here have charged petitioner with failing to inspect the tank, to make it safe, etc. If a warranty of workmanlike performance exists, such allegations are sufficient to bring it into play. The fact that there may be no warranty of seaworthiness is unimportant.

Nor will it do to say that there is no compelling reason to justify the extension of the *Ryan* doctrine to other areas of the law. As this Court pointed out in *Ryan*, the theory of indemnity based on a breach of an implied contractual warranty was not new at that time. Further, the lower Federal Courts have already extended

the doctrine to include roughnecks on oil rigs, divers, stevedores, and carpenters, *Smith vs. Brown and Root Marine Operators, Inc.* (D.C. La., 1965), 243 F.Supp. 130; to ship repairers, *Union Barge Line Corporation vs. Allen* (C.A. 5, 1966) 361 F.2d 217; to a dock owner, *Ammesmaki vs. Interlake Steamship Company* (C.A. 7, 1965) 342 F.2d 627; to towage cases, *United States vs. Tug MANZANILLO* (C.A. 9, 1962) 310 F.2d 220; and to a cargo case, *Crystal vs. Cunard Steamship Company* (C.A. 2, 1964) 339 F.2d 295.

As noted above, petitioner's third party complaint against respondent was dismissed on motion and without affording petitioner a right of trial. In the event that this Court is not prepared on the basis of the record to apply the *Ryan* warranty in the circumstances of this action, we submit that the Court should grant the writ and remand the case for trial. See, for example, *Neff vs. Levin* (D.C.N.J., 1966) 254 F.Supp. 45. This would afford petitioner its right to a determination of the indemnity claim by a jury. *Weyerhauser Steamship Co. vs. Nacirema Operating Co., supra.*

CONCLUSION

For the foregoing reasons a writ of certiorari should issue herein to the end that the judgment that the Court of Appeals for the Fifth Circuit should be reversed, or the cause remanded for further proceedings.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing petition for a writ of certiorari has been duly served on John Allen Bernard, Esq., Attorney for Respondent, by depositing same in the United States mail, postage prepaid, addressed to him at Post Office Drawer No. 3507, Lafayette, Louisiana 70504.

New Orleans, Louisiana, this day of , 1967.

APPENDIX A

MEMORANDUM RULING ON MOTION OF BERRY BROTHERS OIL FIELD SERVICE, INC., TO DISMISS THIRD-PARTY COMPLAINT AGAINST THEM

In this case the plaintiff, Patrick T. Fagan, an employee of Berry Brothers, brings suit against Ocean Drilling & Exploration Company for personal injuries received by him while working on an offshore platform operated by that firm. The complaint alleges that the employees of Ocean who were aboard the platform at the time the work commenced, assured plaintiff and Berry Brothers crew that all tanks, boilers, etc., on the platform were gas-free. It further alleges that this representation was erroneous and that an explosion occurred as a result of gas accumulation in a tank upon which the complainant was working. This negligence and want of due care of Ocean's employees, and their failure to warn complainant and his fellow employees, or the giving of erroneous assurances of safety to them, is the alleged cause of the injuries sued for.

The amount of damages claimed is $400,000.00.

Ocean has filed a third-party complaint against Berry Brothers, which complaint, as amended on August 24, 1964, sets out that Berry Brothers had contracted with them to perform certain services, including the repair and related work on a tank on the platform in question, which is located over thirty miles from the coastline of Louisiana. It is claimed that by virtue of this contract Berry Brothers owed the duty of and impliedly warranted workmanlike service to Ocean in performing its contract, and that the plaintiff's injuries resulted from

the negligence of Berry Brothers or its employees and the breach of the abovementioned warranty. Ocean claims indemnity from Berry Brothers on the theory of passive or technical fault versus active fault, and under the alleged contractual warranty mentioned above.

The third-party petition appears to be another attempt to claim contribution from a joint tort feasor in a case of maritime tort, a procedure which has been denied since the decision in *Halycon Lines vs. Haenn Ship Sealing and Refitting Corp.*, 342 U.S. 282, 72 S.Ct. 277, 96 L. Ed. 318 (1952).

It is clear from the complaint that plaintiff predicates recovery upon the negligence of Ocean and its employees and on no other ground. Furthermore, the negligence alleged against the original defendant is active negligence and not passive negligence as is contended for by Ocean in the third-party complaint. In the absence of a very clear and express contractual indemnity, there is no implied indemnity against the effects of one's own negligence. This question has been put at rest in *Halliburton Co. vs. Norton Drilling Co.*, 302 F.2d 431 (5 Cir. 1962 cert. den.); *Ardoin vs. Union Oil Co. of California*, 226 F. Supp. 192 (W.D. La. 1964); and cases therein cited.

For the foregoing reasons, it is:

ORDERED AND DECREED that judgment be and is hereby rendered dismissing the third-party complaint of Ocean Drilling and Exploration Company against Berry Brothers Oil Field Service, Inc., with costs of the third party action to be taxed against third-party plaintiff.

No further decree is required.

The Clerk will forthwith enter judgment and notify all parties.

Lafayette, Louisiana, this 10th day of December, 1964.

/s/ R. J. Putnam

United States District Judge

Filed December 20, 1964

Alton L. Curtis, Clerk
U.S. District Court
Western District of Louisiana

APPENDIX B

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23421

OCEAN DRILLING & EXPLORATION COMPANY, ET AL

Appellants,

versus

BERRY BROTHERS OILFIELD SERVICE, INC.

Appellee.

No. 23422

OCEAN DRILLING & EXPLORATION COMPANY,

Appellant,

versus

BERRY BROTHERS OILFIELD SERVICE, INC.

Appellee.

Appeals from the United States District Court for the Western District of Louisiana.

(May 10, 1967.)
Before GEWIN, THORNBERRY and DYER,
Circuit Judges.

THORNBERRY, Circuit Judge: In this consolidated appeal, Ocean Drilling & Exploration Company (ODECO)

challenges the District Court's dismissal of its third-party complaints for indemnity against Berry Brothers Oilfield Service, Inc. (Berry Bros.), a repair contractor, in separate actions instituted against ODECO by two employees of Berry Bros. for injuries sustained in the course of performing repairs on a stationary offshore platform owned by ODECO. As advanced by ODECO, the critical issue on this appeal is whether under the facts ODECO may invoke the *Ryan* doctrine[1] in order to obligate Berry Bros. to indemnify ODECO for any amounts it might be required to pay the injured claimants because of Berry Bros.' alleged breach of its implied warranty of workmanlike service. Convinced after careful scrutiny of the record that the *Ryan* doctrine cannot be properly extended to the facts of this controversy, we affirm.

On or about March 8, 1964, ODECO engaged Berry Bros., a professional rig service contractor, to perform welding and repair services on a certain tank located on a fixed, unmanned platform resting in the Gulf of Mexico over thirty miles off the Louisiana coastline. In the course of such repairs the tank exploded, resulting in injuries to Butler and Fagan, two members of Berry Bros.' repair crew. Each brought suit against ODECO under substantially identical complaints charging ODECO with negligence in failing to furnish a safe place to work and in failing to insure that the tank was free from explosive fumes. ODECO denied liability in each action and filed third-party complaints against Berry Bros. alleging that the explosion and resultant injuries had occurred in whole or in part from the failure of Berry

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[1] *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, 1956, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133.

Bros. to perform its repair contract in a reasonable and workmanlike manner. Alternatively, ODECO asserted that if the injuries were, in fact, due to any fault on its part, such fault was purely passive or technical, the injuries having been proximately caused by the active, primary negligence of Berry Bros. The District Court entered judgments sustaining Berry Bros.' motions to dismiss the third-party complaints pursuant to Rule 54(b), thus giving rise to the instant consolidated appeal.

In Ryan, it was established that a stevedornig contractor who enters into a services agreement with a shipowner for any damages sustained as a result of the stevedore's breach of its warranty of workmanlike service. That case, as well as subsequent decisions, made it clear that such right to indemnification is strictly contractual in nature, existing entirely independently of tort theories based upon concepts of "active-passive" and "primary-secondary" negligence. *Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co.*, 1964, 376 U.S. 315, 319-20, 84 S.Ct. 748, 751-52; *Weyerhauser S.S. Corp. v. Nacirema Operating Co.*, 1958, 355 U.S. 563, 569, 78 S.Ct. 438, 442; *Ryan Stevedoring Co. v. Pan-Atlantic S.S. Corp.*, *supra* note 1, 350 U.S. at 133-34, 76 S.Ct. at 237-38. The reasons underlying the establishment of this doctrine of contractual liability were discussed by the Supreme Court in *Italia:*

> Where the shipowner is liable to the employees of the stevedore company as well as its employees for failing to supply a vessel and equipment free of defects, *regardless of negligence*, we do not think it unfair or unwise to require the stevedore to indemnify the shipowner for

> damages sustained as a result of injury-producing defective equipments supplied by a stevedore in furtherance of its contractual obligations . . .
>
> Both sides press upon us their interpretations of the law in regard to the scope of warranties in non sales contracts, such as contracts of bailment and service agreements. But we deal here with a suit for indemnification based upon a maritime contract, governed by federal law . . ., *in an area where rather special rules governing the obligations and liability of shipowners prevail, rules that are designed to minimize the hazards encountered by seamen, to compensate seamen for the accidents that inevitably occur,* and to minimize the likelihood of such accidents.

376 U.S. at 324, 84 S.Ct. at 754. (Emphasis added.) While freely implementing this contractual obligation of the stevedore to indemnify the shipowner in accordance with the liberal spirit of *Ryan*,[2] we have hesitated, however, to extend it beyond those controversies involving the "special rules governing the obligations and liability of shipowners" which necessitated its formulation and justify its application.[3] Without attempting to define all

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[2]E.G., *D/S Ove-Skou v. Hebert*, 5th Cir. 1966, 365 F.2d 341; *United States Lines v. Williams*, 5th Cir. 1966, 365 F.2d 332; *Smith & Son, Inc. v. Skibs A/S Hassel*, 5th Cir. 1966, 362 F.2d 745; *Lusich v. Bloomfield S.S. Co.*, 5th Cir. 1966, 355 F.2d 770; *Waterman S.S. Corp. v. David*, 5th Cir. 1965, 353 F.2d 660, cert. denied, 1966, 384 U.S. 972, 86 S.Ct. 1863; *Grace Lines, Inc. v. Port Everglades Terminal Co.*, 5th Cir. 1963, 324 F.2d 699.

[3]See *Delta Eng'r Corp. v. Scott*, 5th Cir. 1963, 322 F.2d 11, cert. denied, 1964, 377 U.S. 905, 84 S.Ct. 1164, 12 L.Ed.2d 176; *Halliburton Co. v. Norton Drilling Co.*, 5th Cir. 1963, 302 F.2d 431, cert. denied, 1963, 374 U.S. 829, 83 S.Ct. 1870, 10 L.Ed.2d 1052.

of the possible limitations that might properly be placed upon its scope, it is sufficient to state that we are likewise unable to discover any compelling reason to justify the extension of that shipowner-stevedore originated rule to the facts of this controversy.

In its third-party complaint ODECO admits that the platform on which the injuries occurred was a "fixed unmanned structure." Clearly not designed to float on water, see *Offshore Co. v. Robison*, 5th Cir. 1959, 266 F.2d 769, 779, such permanent structure is not a vessel and the injured employees do not therefore fall within the definition of seamen. *Dronet v. Reading & Bates Offshore Drilling Co.*, 5th Cir. 1966, 367 F.2d 150; *Texas Co. v. Savoie*, 5th Cir. 1957, 240 F.2d 674, cert. denied, 355 U.S. 840, 78 S.Ct. 49, 2 L.Ed.2d 51, *Sirmons v. Baxter Drilling, Inc.*, W.D. La. 1965, 239 F.Supp. 348. The injured employees are thus not entitled to the warranty of seaworthiness and must rely solely upon the establishment of some independent act of negligence on the part of ODECO as a basis for recovery. This controversy therefore appears to involve none of the factors calling for the application of those special rules governing the obligations and liability of shipowners to seamen. The claims against ODECO are based purely and simply on tort principles, see *Pure Oil Co. v. Snipes*, 5th Cir. 1961, 293 F.2d 60, and cannot be properly viewed as involving any breach by Berry Bros. of an implied warranty of workmanlike service.

Having concluded that ODECO is not entitled to seek contractual indemnity from Berry Bros. under the *Ryan* doctrine, we are left with the issue of whether a claim for indemnity remains available to ODECO under mari-

time tort principles.[4] The Supreme Court in *Ryan* was not called upon to resolve this issue, and expressly declined to do so:

> [T]he shipowner's action for indemnity here is not based merely on the ground that the shipowner and contractor each is responsible in some related degree for the tortious stowage of cargo that caused injury . . . . Such an action, brought without reliance upon contractual undertakings, would present the bald question whether the stevedoring contractor or the shipowner, because of their respective responsibilities for the unsafe stowage, should bear the ultimate burden of the injured longshoreman's judgment. That question has been widely discussed elsewhere in terms of the relative responsibilities of the parties for the tort, and those discussions have dealt with concepts of primary and secondary or active and passive tortious conduct. Because respondent in the instant case relies entirely upon petitioner's contractual obligation, we do not meet the question of a noncontractual right of indemnity or of the relation of the Compensation Act to such a right.

350 U.S. at 132-33, 76 S. Ct. at 237; *accord*, 350 U.S. at 132 n.6, 76 S.Ct. at 236 n.6. Even assuming, however, as alleged in the third-party complaint, that any negligence on the part of ODECO was merely passive or sec-

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[4]Both parties appear to rely upon indemnity principles arising under state law in urging their respective positions with regard to this issue, but it is clear that federal maritime law, not that of Louisiana or any other state, controls this controversy. See *Movible Offshore Co. v. Ousley*, 5th Cir. 1965, 346 F.2d 870; *Pure Oil Co. v. Snipes*, *supra*.

ondary in character, we are nevertheless compelled to conclude that ODECO's claim for indemnity, not being based upon the violation of a contractual obligation, must fail under maritime law.[5] Here, the injured claimants were entitled to and did, in fact, receive benefits from Berry Bros. under the Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. § 901 et seq., their injuries having occurred on a platform located above the Outer Continental Shelf in the Gulf of Mexico.[6] Section 5 of that Act states that its compensation provisions are exclusive of any other liability of an employer to its employees:

> Sec. 5. The liability of an employer prescribed in section 4 [for compensation] shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death
>
> . . . .

33 U.S.C. § 905. The obvious purpose of this provision, as made clear by the Supreme Court in *Ryan*.

> is to make the statutory liability of an employer

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[5]The same result, moreover, would obtain were we to construe ODECO's third-party complaint as an attempt to seek contribution from Berry Bros. *Halcyon Lines v. Haenn Ship Ceiling & Refitting Corp.*, 1952, 342 U.S. 282, 72 S.Ct. 277, 96 L.Ed. 318; *accord, Pope & Talbot, Inc. v. Hawn*, 1953, 346 U.S. 406, 74 S.Ct. 202, 98 L.Ed. 143.

[6]The Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(c), expressly adopts the Longshoremen's and Harbor Workers' Compensation Act as the basis for compensation for the death or disability of an employee.

> to contribute to its employee's compensation the exclusive liability *of such employer to its employees, or to anyone* claiming under or through such employee, *on account of his injury or death arising out of that employment.* In return, the employee, and those claiming under or through him, are given a substantial *quid pro quo* in the form of an assured compensation, regardless of fault, as a substitute for their excluded claims.

350 U.S. at 129, 76 S.Ct. at 235. (Emphasis in original). It is thus apparent that the Act's exclusive liability provision effectively abrogates any independent tort liability of the employer to its employees, thereby eliminating any basis which may have existed for indemnification on a tort theory. Thus, while the employer may continue, even in spite of the exclusive liability provision of the Act, to remain liable for indemnity on the basis of an express or implied contractual obligation, in the absence of such obligation, as here, there simply exists no underlying tort liability upon which to base a claim for indemnity against the employer. See *United Airlines, Inc. v. Wiener*, 9th Cir. 1964, 335 F.2d 379, 402-04, cert. dismissed, 379 U.S. 951, 85 S.Ct. 452; *Halliburton Co. v. Norton Drilling Co., supra*, 302 F.2d at 434; *Brown v. American-Hawaiian S.S. Co.*, 3d Cir. 1954, 211 F.2d 16, 18; *American Mut. Liab. Co. v. Matthews*, 2nd Cir. 1951, 182 F.2d 322, 323-36. Accordingly, the judgment of the District Court dismissing the third-party complaints of ODECO against Berry Bros. is

AFFIRMED.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1966

No. 23421

D. C. Docket No. CA 10,471

OCEAN DRILLING & EXPLORATION COMPANY, ET AL

Appellants,

versus

BERRY BROTHERS OILFIELD SERVICE, INC.

Appellee.

Appeals from the United States District Court for the Western District of Louisiana.

Before GEWIN, THORNBERRY and DYER, Circuit Judges.

JUDGEMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Ocean Drilling & Exploration Company, and others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 10, 1967

Issued as Mandate:

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1966

No. 23422

D. C. Docket No. 10,147

OCEAN DRILLING & EXPLORATION COMPANY,
Appellant,

versus

BERRY BROTHERS OILFIELD SERVICE, INC.
Appellee.

Appeals from the United States District Court for the Western District of Louisiana.

Before GEWIN, THORNBERRY and DYER,
Circuit Judges.

JUDGEMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Ocean Drilling & Exploration Company, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 10, 1967

Issued as Mandate:

APPENDIX D

In the Gulf of Mexico there are presently approximately 157 drilling rigs on location and engaged in the production of oil, gas and other minerals. These rigs are located on submersible barges, floating barges, drilling tenders and fixed platforms. An additional 15 rigs are on location off the Pacific Coast and in Alaskan waters. Values run into the millions.

When a major oil company obtains an offshore lease, it will generally employ a drilling contractor, such as petitioner, to drill and complete one or more wells on the lease. The drilling contractor will furnish the drilling rig and a submersible or floating barge. Either the lease owner or the drilling contractor will then subcontract certain work to one or more of the following specialty contractors:

1. Catering.
2. Surveying, to fix the well location.
3. Transportation — vessels or helicopters.
4. Pile driving.
5. Casing crews.
6. Electric logs.
7. Mud logs.
8. Directional drilling.

9. Rental tools.

10. Welding.

11. General labor.

12. Divers.

13. Communications.

14. Fishing tools.

15. General construction.

16. Cementing services.

17. Engineering.

18. Supplies.

In addition to employees of the owner and drilling contractor, employees of one or more of the subcontractors may be on the rig at any given time. Each man is a specialist in his field and has a specific job to do.

APPENDIX E

The following news story appeared in the *New Orleans Times Picayune* on July 19, 1967, and demonstrates the hazards incident to work in the offshore area.

MAN MISSING IN OIL RIG FIRE

Explosion Leaves Six Workers Injured

By JEFF DAVIS
(Times-Picayune Oil Editor)

One man was missing and presumed dead, another was in a serious condition in a Baton Rouge hospital, and five others have been treated for minor burns following an exploscion and fire on an offshore oil producing platform south of Morgan City.

A maintenance crew was working on the oil storage facility in Block 175, Eugene Island area, owned by Shell Oil Co. and located about 50 miles due south of the southeast tip of Marsh Island. Three of the men were employed by Shell Oil Co. and four by Berry Bros. General Contracting Co. of Morgan City.

The missing man is J. A. Powell, 38, of Georgetown, in North Louisiana. He was maintenance foreman for Shell, and had been with the company since October of 1953. Officials informed his wife and one child late Tuesday afternoon that he was missing.

BURNED CRITICALLY

E. J. Boudreaux, 27, of Plaquemine, a welder for Berry Brothers, was taken to the Baton Rouge General

Hospital, where he was reported in critical condition. He suffered burns over most of his body.

Treated for minor injuries and burns in the Morgan City hospital Tuesday, and expected to be released Tuesday night, were Carl Cupit, 20, of Meadville, Miss.; James Peckenpaugh, 22, Cleveland, Miss.; E. J. Mouton, 24, of 4038 Jefferson Hwy., New Orleans, all employed by Berry Bros.; and C. D. McCaskill, 23, Baton Rouge, and R. E. Dubose, Jr., 24, of Crowley, employees of Shell Oil Co.

Cause of the explosion and fire, which occurred between 11 a. m. and noon Tuesday, had not been determined Tuesday afternoon. The men all jumped into the 75 feet of water surrounding the platform. Six were picked up by the stand-by crew boat at the scene, and a helicopter leased by Shell, which was in the area at the time. They were all brought ashore in the aircraft.

WELLS SERVED

The platform serves a total of three wells, but only one has been completed for production and this was shut in. The other two have been drilled and cased off, and have not been perforated. Crude oil from other platforms is also stored on this structure.

Shell officials said there was no wild well adding to the situation, and the fire was completely out by 3:30 p. m. Tuesday, when officials made their first report to the home office.

A helicopter and search boats were in the vicinity Tuesday afternoon, searching for the missing man.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 437

OCEAN DRILLING & EXPLORATION COMPANY,
Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATE COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent, Berry Brothers Oil Field Service, Inc., submits that the petition of Ocean Drilling & Exploration Company for a writ of certiorari to review the judgments of the United States Court of Appeals for the Fifth Circuit, should be denied.

QUESTIONS PRESENTED

In its petition, petitioner requests that the Court grant a writ in order to review two questions, whether the doctrine of *Ryan Stevedoring Company v. Pan Atlantic Steamship Corporation*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133 (1956), applies in the offshore oil

industry, and whether petitioner should be afforded the opportunity to demonstrate that the *Ryan* doctrine is applicable in the offshore oil industry. Those are not the questions presented in this case and decided by the Court of Appeals. This case did not involve a vessel, it related to a permanent, fixed platform. The question presented in the case and decided by the Court of Appeals was whether the *Ryan* rule, as extended and elaborated upon in such subsequent shipowner — stevedore cases as *Weyerhaeuser*[1] and *Italia*,[2] should be applied to a case not involving the rather special rules governing the obligations and liability of shipowners, to a case in no way involving a vessel or services to or on a vessel, to an accident resulting in injuries to persons who were not seamen, so as to obligate an alleged contractor to indemnify petitioner for claims asserted entirely on the basis of petitioner's own negligence.

STATEMENT OF THE CASE

Petitioner filed third party complaints against respondent seeking to recover indemnity under the *Ryan* doctrine, in the event of petitioner's liability to plaintiffs, Fagan and Butler, in damage suits filed by plaintiffs against petitioner. In their suit against petitioner, plaintiffs claimed to have been injured as a result of an accident that occurred on a stationary oil and gas production platform, on which plaintiffs were working, when a tank on the platform allegedly exploded, and plaintiffs claimed that the accident was caused by pe-

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[1] *Weyerhaeuser Steamship Co. v. Nacerima Operating Co.*, 355 U.S. 563, 78 S.Ct. 483 (1958).

[2] *Italia Societa Per Azioni di Navigazione v. Oregon Stevedoring Company*, 376 U.S. 315, 84 S.Ct. 748 (1964).

titioner's negligence. While one of the complaints, Butler's, also alleged that the platform was a vessel and urged unseaworthiness as a basis for recovery from petitioner, petitioner alleged in its third party complaint that the platform was a fixed structure. It is not disputed that the platform was a fixed, permanent platform, not a vessel. Petitioner, accordingly, could not be liable to plaintiffs unless it was guilty of independent negligence on its own part proximately causing the accident. *Pure Oil Company v. Snipes*, 293 F.2d 60 (5th Cir. 1961). The complaints alleged independent negligence on petitioner's own part such as specifically representing and assuring that the tank had been degassed and was free of explosive substances, whereas it was not, and in, at the time involved, running gas into the tank through open valves and causing gas or other explosive substances to enter the tank directly resulting in the explosion.

Respondent moved to dismiss petitioner's third party complaints for failure to state claims on which relief could be granted. The motions were maintained by the district court and the third party complaints were dismissed. Petitioner subsequently settled plaintiffs' suits and then appealed the dismissals of the third party complaints to the United States Court of Appeals for the Fifth Circuit. The dismissals were affirmed by the Court of Appeals. Petitioner is in error in representing that the decision of the Court of Appeals was grounded on a holding that the *Ryan* doctrine was inapplicable to the offshore oil industry. The Court's decision was simply based on a finding that the *Ryan*, *Weyerhaeuser* and *Italia* rules were inapplicable under the particular circumstances of the case involved, since

the case did not involve a vessel, plaintiffs were not seamen, and the special rules governing the rights and obligations of shipowners, seamen and contractors servicing vessels were not involved.

SUMMARY OF ARGUMENT

The petition for writ of certiorari should be denied. This case does not involve a vessel, nor a vessel owner, nor a seaman, nor a contractor performing services for a vessel, and it does not involve a vessel owner who could be liable to employees of a contractor regardless of negligence. The special circumstances and considerations which give rise to and justify the rules of the *Ryan*, *Italia* and *Weyerhaeuser* cases are not present in this case. The decision of the Court of Appeals holding that the *Ryan* doctrine was not applicable to the particular circumstances involved in this case is clearly correct.

The question presented for review by the petition, which relate to application of the *Ryan* doctrine "in the offshore oil industry", are not the questions which were presented in this case and decided by the Court of Appeals. The Court of Appeals did not hold that the *Ryan* doctrine is inapplicable in the offshore oil industry. The petition does not request that this Court review the questions involved in this case and decided by the Court of Appeals.

None of the considerations referred to in Rule 19 of the Rules of this Court, governing the granting of review on writ of certiorari, are present in this case. The decision of the Court of Appeals is not in conflict

with any previous decision of this Court nor with any decision of another Court of Appeals. The case does not present an important question of federal law which has not been, but should be, settled by this Court, and there are no special and important reasons for this Court to review the decision of the Court of Appeals. The case does not involve the special circumstances and considerations which have drawn and merited the Court's attention to cases such as *Ryan*, *Weyerhaeuser* and *Italia*.

ARGUMENT

In *Italia Societa Per Azioni di Navigazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 84 S.Ct. 748 (1964), this Honorable Court pointed up the special circumstances and considerations which justify the rules applied in the *Ryan* case and subsequent shipowner-stevedore cases such as *Weyerhaeuser* and *Italia*. The Court stated, at 376 U.S. 324, 84 S.Ct. 754:

> "Where the shipowner is liable to the employees of the stevedore company as well as its employees for failing to supply a vessel and equipment free of defects, *regardless of negligence*, we do not think it unfair or unwise to require the stevedore to indemnify the shipowner for damages sustained as a result of injury-producing defective equipment supplied by a stevedore in furtherance of its contractual obligations. (Emphasis Supplied)
>
> "Both sides press upon us their interpretation of the law in regard to the scope of warranties in nonsales contracts, such as contracts of bailment and service agreements. But we deal here

> with a suit for indemnification based upon a maritime contract, governed by federal law, American Stevedores, Inc. v. Porello, supra, *in an area where rather special rules governing the obligations and liability of shipowners prevail, rules that are designed to minimize the hazards encountered by seamen, to compensate seamen for the accidents that inevitably occur,* and to minimize the likelihood of such accidents. By placing the burden ultimately on the company whose default caused the injury, *Reed v. The Yaka,* 373 U.S. 410, 414, 83 S.Ct. 1349, 1352-1353, 10 L.Ed. 2d 448, we think our decision today is in furtherance of these objectives." (Emphasis Supplied)

The case at bar does not involve those special circumstances and considerations referred to in *Italia,* which justify the rules of the *Ryan, Italia* and *Weyerhaeuser* cases. This case does not involve a suit for indemnification based upon a maritime contract "in an area where rather special rules governing the obligations and liability of shipowners prevail, rules that are designed to minimize the hazards encountered by seamen . . .". This case does not involve a shipowner who could be liable to employees of a stevedore or other contractor for failing to supply a vessel and equipment free from defect, regardless of negligence. In this case there is no ship, there is no shipowner, there is no seaman, and petitioner could be liable to plaintiffs only if it was guilty of independent negligence of its own. *Pure Oil Co. v. Snipes,* 293 F.2d 60 (5th Cir. 1961). The case which was presented to the Court of Appeals and which it decided was a case involving a permanent, fixed platform. Such a platform is not a vessel, workmen thereon are not seamen and they are not entitled to

the warranty of seaworthiness. *Dronet v. Reading & Bates Offshore Company*, 367 F.2d 150 (5th Cir. 1966); *Texas Company v. Savoie*, 240 F.2d 674 (5th Cir. 1957), cert. denied, 355 U.S. 840, 78 S.Ct. 49, 2 L.Ed.2d 51. The Court of Appeals simply held that the *Ryan*, *Weyerhaeuser* and *Italia* rules were not applicable to the particular circumstances of this case. In its opinion, which is now reported as *Ocean Drilling & Exploration Company v. Berry Brothers Oilfield Service*, 377 F.2d 511 (5th Cir. 1967), the Court stated, at 377 F.2d 513:

> 'While freely implementing this contractual obligation of the stevedore to indemnify the shipowner in accordance with the liberal spirit of *Ryan*, we have hesitated, however, to extend it beyond those controversies involving the 'special rules governing the obligations and liability of shipowners' which necessitated its formulation and justify its application. Without attempting to define all of the possible limitations that might properly be placed upon its scope, it is sufficient to state that we are likewise unable to discover any compelling reason to justify the extension of that shipowner-stevedore originated rule to the facts of this controversy."

The decision of the Court of Appeals is clearly correct.

Petitioner attempts to phrase the case in terms of application of the *Ryan* doctrine to the offshore oil industry. The petition and its appendices refer to drilling barges, crew boats, tenders, and other vessels, special purpose or otherwise, used in the offshore oil industry. References are made to contractors performing services on such vessels, to workers thereon, and to

cases holding that workers on such special purpose vessels are susceptible to classification as seamen. None of those references are in any way relevant or pertinent to the case decided by the Court of Appeals. The Court of Appeals was not called upon to decide and did not decide that the *Ryan* doctrine should not apply to cases involving services to or on drilling barges, crew boats, or other types of vessels, special purpose or otherwise, used in the offshore oil industry. The Court of Appeals did not hold that the *Ryan* doctrine has no application in cases involving injuries to workmen engaged in loading or unloading supplies and equipment from such vessels or engaged in performing repairs or other services on such vessels. The Court of Appeals did not hold, as represented by petitioner, that the *Ryan* doctrine is not applicable in the offshore oil industry. In fact, in a case decided only the day before the decision in the case at bar, the Court of Appeals applied the *Ryan* doctrine in an offshore oil industry situation, in a case involving a claim for indemnity by the owner of a vessel engaged in the offshore oil industry against a contractor performing services for the vessel, where the contractor's employee, found to be a seaman, was injured. See *Underwater Services, Inc. v. Brown & Root Marine Operators, Inc.*, 376 F.2d 852 (5th Cir. 1967), a *per curiam* decision affirming and adopting the opinion of the district court in *Smith v. Brown & Root Marine Operators, Inc.*, 243 F.Supp. 130 (W.D.La. 1965). The petition, accordingly, does not even request that this Court review the quetsions involved in this case and decided by the Court of Appeals.

The decision in this case is correct and does not conflict with any decision of this Court nor with any

decision of another Court of Appeals. The cases cited at Page 9 of the petition, which petitioner intimates are in conflict with the decision in the case at bar, are all completely distinguishable. All of the cited cases involved claims by vessel owners against persons who contracted to render services for the vessel, and those involving personal injuries involved injuries to persons who were seamen and to whom the special obligations and duties inherent in the relationship between vessel owner and seaman were applicable. See *Smith v. Brown & Root Marine Operators, Inc.*, 243 F.Supp. 130 (W.D. La. 1965) (which, as noted above, was affirmed by the Fifth Circuit Court of Appeals in a decision rendered the day before that in the case at bar); *Union Barge Line Corporation v. Allen*, 361 F.2d 217 (5th Cir. 1966); *Ammesmaki v. Interlake Steamship Company*, 342 F.2d 627 (7th Cir. 1965); *United States v. Tug Manzanillo*, 310 F.2d 220 (9th Cir. 1962); *Crystal v. Cunard Steamship Company*, 339 F.2d 295 (2nd Cir. 1964). Petitioner also cites *Weyerhaeuser Steamship Company v. Nacerima Operating Company*, 355 U.S. 553, 78 S.Ct. 438 (1958) to the effect that a shipowner may possibly obtain indemnity from the stevedore, even though guilty of negligence. But *Weyerhaeuser* involved the shipowner-seaman situation, in fact the classical shipowner-stevedore situation, and it involved the rather special rules governing the obligations and liabilities, duties and rights of shipowners, vessels and seamen. It is not pertinent to the case at bar, which does involve those special circumstances and considerations. And the fact that the rules of the *Ryan*, *Weyerhaeuser* and *Italia* cases are urged to create an obligation to indemnify one from liability resulting from his own negligence,

is good and valid reason to limit application of the rules to those situations that do present the special considerations and circumstances giving rise to the rules and justifying their application. None of the cases cited by the petitioner in its petition for writs is in conflict with the decision of the Court of Appeals in the case at bar.

Petitioner complains that the claim for indemnity should not have been dismissed without petitioner being afforded the right to demonstrate the necessity of extending the *Ryan* doctrine to the offshore oil industry, on the basis of "business and economic considerations, safety of performance, etc." But, as demonstrated hereinabove, the issue preesnted in this case was not whether the *Ryan* doctrine should or should not be applied to the offshore oil industry, and the "business and economic considerations, safety of performance, etc." referred to, which are apparently those set forth in Appendices D and E of the petition, are irrelevant to the case at bar. Further, there can be no doubt that the Court of Appeals for the Fifth Circuit is and was, when it decided this case, already completely familiar with the offshore oil industry situation and its circumstances. Specialty contractors may be used in the offshore oil industry and hazards may exist in connection with exploration and production work in that industry. But similar specialty contractors are used and simliar hazards are encountered in the inland oil industry and, in fact, in many other types of industrial occupations. Those factors would not transform this case into one involving vessels, seamen, and the special rules governing the obligations, liabilities and rights of shipowners and seamen. They would not convert the situa-

tion in this case into the *Ryan, Weyerhaeuser* or *Italia* situation. Additionally, in the offshore platform situation, which is the situation presented here, the owner of the well and the platform is generally a major company or a group of such companies. Profits accruing to the well owner from producing wells are tremendous. The well owners are much better situated financially than the various service companies, most of whom are quite small and marginal. The well owner is much better able to bear any losses that may occur. Yet, in essence, petitioner's position is that the well owner should be able to shift the entire burden of its own liability *resulting from its own negligence* to the small service company, the party at the bottom of the ladder and the party least financially capable of bearing the losses. Contracts with major companies for work on offshore platforms sometime contain express hold harmless agreements in favor of the major company, under which the service company expressly agrees to indemnify the major company from its liability resulting from its own negligence. Quite often the small contractor consents to such one-sided agreements because of economic pressure resulting from the contractor's poor bargaining position when dealing with offshore well owners. The result is unjust and inequitable. The injustice would certainly be greater if the same obligation is imposed where there is no such agreement.

The petition for a writ of certiorari should be denied. The decision of the Court of Appeals is correct. The questions that petitioner requests the Court to review are not the questions involved in this case an decided by the Court of Appeals. None of the considerations referred to in Rule 19 of the Rules of this Court, gov-

erning the granting of review on writ of certiorari, are present in this case. The decision of the Court of Appeals is not in conflict with any previous decision of this Court nor with any decision of another Court of Appeals. This case does not present an important question of federal law which has not been, but should be, settled by this Court, and there are no special and important reasons, such as contemplated by Rule 19, for this Honorable Court to review the decision of the Court of Appeals, as is demonstrated by the fact that this Court has previously refused to review decisions of the Court of Appeals involving the question of application of the *Ryan* rule to cases not involving the special circumstances giving rise to the *Ryan* rule and justifying its application, and decisions dealing with the rights and obligations applicable in cases involving injuries to workmen on permanent offshore platforms. See *Halliburton Company v. Norton Drilling Company*, 302 F.2d 431 (5th Cir. 1962) cert. den., 374 U.S. 824, 83 S.Ct. 1870 (1963); *Texas Company v. Savoie*, 240 F.2d 674 (5th Cir. 1957), cert. den., 355 U.S. 840, 78 S.Ct. 49. The case at bar does not involve the circumstances and considerations peculiar to vessels, vessel owners, seamen, contractors rendering services to or on vessels and the special rules governing their rights and obligations, which have drawn and merited the Court's attention to cases such as *Ryan*, *Weyerhaeuser* and *Italia*. Respondent submits that it is because petitioner recognizes that the decision of the Court of Appeals on the issue involved in this case is correct and is not properly one for review by this Court on writ of certiorari that petitioner has attempted to phrase the case in terms of applicability of the *Ryan* doctrine to "the offshore oil

industry", and talks of drilling barges, crew boats, tenders, and other types of vessels and workers theron, none of which are involved in or pertinent to this case.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

J. J. DAVIDSON, JR., of
DAVIDSON, MEAUX, ONEBANE
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Attorney for Berry Brothers Oil
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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing brief in opposition to petition for writ of certiorari has been duly served on George B. Matthews, Esq., attorney for petitioner, by depositing same in the United States mail, postage prepaid, properly addressed to him at 1836 National Bank of Commerce Building, New Orleans, Louisiana, and upon Daniel Huttenbrauck, Esq., attorney for petitioner, by depositing same in the United States mail, airmail, postage prepaid, properly addressed to him at 27 William Street, New York, New York.

Lafayette, Louisiana, this _____ day of _____, 1967.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 437

OCEAN DRILLING & EXPLORATION COMPANY,

Petitioner,

versus

BERRY BROTHERS OIL FIELD SERVICE, INC.

Respondent.

SUPPLEMENTAL AND REPLY BRIEF ON BEHALF OF PETITIONER

This supplemental and reply brief is submitted pursuant to §§4 and 5 of Rule 24 of the Rules of this Court.

The opposition of respondent is basically an attempt to restrict the issues in this case to a narrow field and to preclude a consideration by this Court of a most important legal issue, namely, whether the *Ryan* doctrine of indemnity is to be restricted to the ship-stevedore cases, or be given broader effect and applied in the offshore oil industry. Respondent's brief in opposition infers that the words "vessel" and "seaman" have a talismanic effect — absent a vessel or seaman the *Ryan* warranty cannot come

into being. This overlooks the origin of the warranty. Actually, the implied warranty of workmanlike performance was not born in *Ryan*, and the real issue is whether or not the application of what has come to be known as the *Ryan* doctrine to the circumstances present in the offshore oil industry will have a salutary and beneficial effect. The implied warranty was not created in the maritime field, and its application has not since been so restricted.

Since the petition herein was filed, a District Court in California has applied the *Ryan* warranty to a non-maritime situation. *Great American Insurance Company vs. Evans*, 269 F. Supp. 151 (D.C. Cal., 1967). In that case an employee of the lessee of a warehouse was injured while using a freight elevator and subsequently died as a result of the injuries. The lessee of the warehouse had contracted with Valley Elevator Company to maintain the freight elevator. The contract provided that Valley "would assume no liability for injuries or damage to persons or property except those directly due to [Valley's] acts or omissions." The heirs of the decedent brought an action against the owners of the warehouse, the lessee and Valley alleging that the death was due to the negligent operation, maintenance, and control of the elevator. A jury returned a verdict against all defendants. The plaintiff Great American, as insurer of the owners, partially satisfied the judgment and took an assignment from its insured of their right to indemnification. This action was brought against the lessee and Valley seeking indemnification. The lessee settled the claim against him and the case proceeded against Valley only. The Court held that the right of implied indemnity as set forth in *Ryan Stevedoring Company vs. Pan Atlantic Corp*, 350 U. S. 124, 76 S. Ct. 232 (1956) came into being as a result of

the maintenance contract between the lessee and Valley, and that Great American as the assignee of the owners of the building was a third party beneficiary of this implied indemnity, citing *Crumady vs. The Joachim Hendrix Fisser*, 358 U. S. 423, 79 S. Ct. 445 (1959).

This holding demonstrates that the issues presented in the petition for a writ of certiorari are, in fact, substantial questions of federal law which have not been but should be, settled by this Court.

Petitioner therefore respectfully prays that a writ of certiorari should issue herein as prayed for in the original petition.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the above and foregoing petition for a writ of certiorari has been duly served on John Allen Bernard, Esq., Attorney for Respondent, by depositing same in the United States mail, postage prepaid, addressed to him at Post Office Drawer No. 3507, Lafayette, Louisiana 70504.

New Orleans, Louisiana, this day of , 1967.